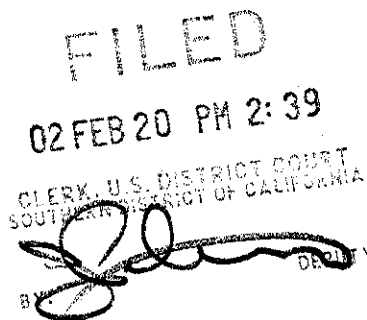


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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 '02 CV 0308 J (POR)

14 SAFECO INSURANCE COMPANY OF
15 AMERICA, a Washington corporation,

16 Plaintiff,

17 vs.

18 COMMERCIAL MONEY CENTER, INC., a
19 Nevada corporation; COMMERCIAL
20 SERVICING CORPORATION, a Nevada
21 corporation; CAPITAL MARKETS
22 CORPORATION, a corporation; STERLING
23 WAYNE PIRTLE, an individual; ANITA
24 PIRTLE, an individual; RONALD FISHER, an
25 individual; and NANCY FISHER, an individual,

26 Defendants.

Case No.

SAFECO INSURANCE COMPANY'S
COMPLAINT FOR DAMAGES:

1. BREACH OF INDEMNITY AGREEMENT;
2. SPECIFIC PERFORMANCE OF INDEMNITY AGREEMENT;
3. EQUITABLE INDEMNITY;
4. MONEY PAID;
5. EXONERATION;
6. QUIA TIMET;
7. BREACH OF SALES AND SERVICING AGREEMENT;
8. SPECIFIC PERFORMANCE OF SALES AND SERVICING AGREEMENT;
9. ACCOUNTING

27 Plaintiff SAFECO INSURANCE COMPANY OF AMERICA ("SAFECO") alleges:

28 **JURISDICTION AND VENUE**

1. SAFECO is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of Washington with its principal place of business in the State of Washington.

2. SAFECO is qualified to conduct and conducts business in the State of California, as a surety.

1 3. Upon information and belief, defendant COMMERCIAL MONEY CENTER,
2 INC. ("CMC"), is, and at all times relevant hereto was, a Nevada corporation, conducting
3 business in the City of Escondido, State of California.

4 4. Upon information and belief, defendant COMMERCIAL SERVICING
5 CORPORATION ("CSC") is, and at all times relevant hereto was, a Nevada corporation,
6 conducting business in the City of Escondido, State of California.

7 5. Upon information and belief, defendant CAPITAL MARKETS
8 CORPORATION ("CMARK") is, and at all times relevant hereto was, authorized to conduct
9 and is conducting business in the City of Escondido, State of California.

10 6. Defendant STERLING WAYNE PIRTLE ("WAYNE PIRTLE") is, and at all
11 times relevant hereto was, an individual domiciled in the State of Nevada. WAYNE PIRTLE
12 is president of CMC and is an indemnitor with respect to those CMC transactions which are
13 relevant hereto, which transactions occurred in substantial part in the City of Escondido.
14 State of California.

15 7. Defendant ANITA PIRTLE is, and at all times relevant hereto was, an
16 individual domiciled in the State of Nevada. ANITA PIRTLE is an indemnitor with respect to
17 those CMC transactions which are relevant hereto, which transactions occurred in
18 substantial part in the City of Escondido, State of California.

19 8. On information and belief, defendant RONALD FISHER is, and at all times
20 relevant hereto was, an individual domiciled in the State of California. RONALD FISHER is
21 an indemnitor with respect to those CMC transactions which are relevant hereto, which
22 transactions occurred in substantial part in the City of Escondido, State of California.

23 9. On information and belief, defendant NANCY FISHER is, and at all times
24 relevant hereto was, an individual domiciled in the State of California. NANCY FISHER is
25 an indemnitor with respect to those CMC transactions which are relevant hereto, which
26 transactions occurred in substantial part in the City of Escondido, State of California.

27 10. The amount in controversy as to each of the claims asserted herein exceeds
28 \$75,000.

1 11. This Court has jurisdiction of this matter under 28 U.S.C. §§1332 and
2 1367(a), and venue in this District is proper under 28 U.S.C. §1391(a).

3 **GENERAL ALLEGATIONS**

4 12. SAFECO is informed and believes, and on that basis alleges, that each of the
5 defendants is the principal, agent, servant, employee or alter ego of each of the other
6 defendants, and was acting in that capacity at all times relevant hereto.

7 13. SAFECO is also informed and believes, and on that basis alleges, that CSC
8 is an affiliate or subsidiary of CMC and/or CMARK, and is a principal, agent, servant,
9 employee or alter ego of each of the other defendants, and was acting in that capacity at all
10 times relevant hereto. As such, CSC is hereafter collectively referred to, together with
11 CMC and CMARK, as CMC.

12 **CMC'S LEASING PROGRAMS**

13 14. CMC purports to operate as a full service leasing company offering a variety
14 of leasing programs.

15 15. As part of its leasing programs, CMC purports to purchase various equipment
16 of use to both individuals and small-to-mid-size businesses, and to then lease that
17 equipment to third party individuals or businesses.

18 16. Upon information and belief, CMC operates its leasing programs in its own
19 name, and through its subsidiaries and affiliates, through offices located in Escondido,
20 California.

21 17. CMC groups its leases into lease pools. CMC's lease pools include between
22 20 and 150 leases.

23 18. Upon information and belief, CMC sells the stream of payments provided by
24 the leases in a given pool as an investment to a lending institution.

25 **SURETY BONDING OF CMC'S LEASING PROGRAMS**

26 19. In order to make the lease pool a more attractive investment, CMC obtains
27 surety bonds to guarantee each lessee's performance of its lease obligations.

28 20. Beginning on June 14, 1999, and continuing through June 1, 2000, CMC

1 requested SAFECO, as surety, to issue lease bonds on its behalf in connection with
2 various lease pools.

3 21. SAFECO, as surety, issued lease bonds ("the Bonds") on behalf of CMC's
4 lessees, as principals, and in favor of CMC, as obligee.

5 22. Ultimately, SAFECO issued over 696 separate Bonds, guaranteeing lease
6 obligations grouped into 14 different lease pools.

7 **CMC'S INDEMNITY AGREEMENT**

8 23. On or about April 30, 1999, in partial consideration for SAFECO's issuance of
9 the Bonds, and as an inducement to SAFECO to issue the Bonds, CMC, through its
10 president WAYNE PIRTLE, executed a written Indemnity Agreement for the benefit of
11 SAFECO. A true and correct copy of that Indemnity Agreement is attached hereto as
12 Exhibit "A" and is incorporated by this reference as though set forth fully herein.

13 24. WAYNE PIRTLE and ANITA PIRTLE (hereinafter collectively referred to as
14 the "PIRTLES") and RONALD FISHER and NANCY FISHER (hereinafter collectively
15 referred to as the "FISHERS") also executed that Indemnity Agreement in favor of
16 SAFECO on or about April 30, 1999.

17 **CMARK'S INDEMNITY AGREEMENT**

18 25. On or about June 24, 1999, in partial consideration for SAFECO's issuance of
19 the Bonds, and as an inducement to SAFECO to issue the Bonds, CMARK, through its
20 president WAYNE PIRTLE, executed a written Indemnity Agreement for the benefit of
21 SAFECO. A true and correct copy of that Indemnity Agreement is attached hereto as
22 Exhibit "B" and is incorporated by this reference as though set forth fully herein.

23 26. The PIRTLES and the FISHERS also executed that Indemnity Agreement in
24 favor of SAFECO on or about June 24, 1999.

25 27. The April 30, 1999, Indemnity Agreement and the June 24, 1999, Indemnity
26 Agreement (hereinafter collectively referred to as the "Indemnity Agreements") provide,
27 among other things, that CMC, the PIRTLES and the FISHERS will indemnify and save
28 harmless SAFECO from and against all losses, costs, damages, attorney's fees and

1 expenses of whatever kind or nature which arise by reason of, or in consequence of,
2 SAFECO's issuance of the Bonds at CMC's request.

3 28. The Indemnity Agreements also provide that CMC, the PIRTLES and the
4 FISHERS will, on SAFECO's demand, pay to SAFECO, or deposit with SAFECO, as
5 collateral, an amount sufficient to discharge any claim made against SAFECO on any of the
6 Bonds.

7 29. The Indemnity Agreements also give SAFECO the right, until it receives
8 conclusive proof of its discharge without loss from any of the Bonds, and until it has been
9 otherwise fully indemnified under each of the Indemnity Agreements, to freely access CMC,
10 the PIRTLES and the FISHERS' books, records and accounts for the purposes of
11 examining and copying the accounts.

12 30. In executing the Indemnity Agreements, CMC, the PIRTLES and the
13 FISHERS explicitly represented and warranted therein that each of them is and was
14 specifically and beneficially interested in obtaining each Bond which SAFECO issued.

15 **THE SALE AND SERVICING AGREEMENTS**

16 31. CMC sold the stream of lease payments in a given SAFECO lease pool to
17 investors pursuant to a "Sale and Servicing Agreement." Under the Sale and Servicing
18 Agreement, of which there were 14, one for each lease pool, CMC also sold and
19 transferred to investors its rights to payment under SAFECO's Bonds. A true and correct
20 copy of one such Sale and Servicing Agreement between CMC, as seller, and NetB@nk,
21 as purchaser, is attached hereto as Exhibit "C" and is incorporated by this reference as
22 though set forth fully herein.

23 32. The Sale and Servicing Agreement appoints SAFECO the Servicer of the
24 pooled leases sold thereunder, although the agreement also provides that CMC and/or
25 CSC will operate as the Sub-Servicer of the pooled leases. Indeed, under the Sale and
26 Servicing Agreement, CMC and/or CSC have full control of the leases, the payments from
27 the various lessees pursuant to the leases and the transfer of those payments to the
28 investors. SAFECO has no control over or access to the leases or the payments

1 thereunder.

2 33. In addition and as part of the transaction establishing the lease pools and
3 bonding commitments, a written Assignment of Contract Rights under Each Lease,
4 Collection Account Deposits, Rights under the Safeco Bonds and All Proceeds Thereof was
5 executed by CMC. An exemplar of said assignment is attached as Exhibit "D."

6 **CLAIMS MADE AGAINST SAFECO**

7 34. On or about December 28, 2001, SAFECO received a claim from NetB@nk,
8 a federal savings bank and a CMC investor, stating that CMC was delinquent in making
9 payments to NetB@nk on seven investment lease pools and was delinquent specifically in
10 its payment for the month of December 2001 in the amount of \$901,406.42. A true and
11 correct copy of NetB@nk's claim letter is attached hereto as Exhibit "E" and is incorporated
12 by this reference as though set forth fully herein.

13 35. By letter dated December 26, 2001, Epic Funding Corporation ("Epic
14 Funding"), another CMC investor, gave notice to SAFECO that it had not received its
15 monthly payment of \$144,525.28 for November 2001 or \$144,525.28 for December 2001.
16 Subsequently, the January 2002 payment of \$144,525.28 also fell due. A true and correct
17 copy of Epic Funding's claim letter is attached hereto as Exhibit "F" and is incorporated by
18 this reference as though set forth fully herein. By a second letter dated January 8, 2002,
19 Epic Funding further advised that it considered the payment failure a "Service Termination
20 Event" and demanded \$2,792,367.59 from SAFECO. A true and correct copy of Epic
21 Funding's letter is attached hereto as Exhibit "G" and is incorporated by this reference as
22 though set forth fully herein.

23 36. Further, on or about February 19, 2002, SAFECO received oral notice of a
24 claim from Guardian Capital LLC, yet another CMC investor, advising that it too had not
25 received its monthly payment of approximately \$300,000 from CMC. No claim letter has
26 yet been received, but once it is received, SAFECO will amend its claim herein accordingly.

27 **PAYMENTS MADE BY SAFECO PURSUANT TO CLAIMANT DEMANDS**

28 37. Pursuant to the written demands of NetB@nk and Epic Funding as set out

above, and due to certain unique financial difficulties being faced by these claimants, particularly NetB@nk, and as an accommodation to CMC, the PIRTLES and the FISHERS, SAFECO made the following payments:

<u>DATE</u>	<u>PAYEE</u>	<u>AMOUNT</u>
February 1, 2002	NetB@nk	\$901,406.42
February 8, 2002	Epic Funding	\$433,575.84

38. In making said payments on behalf of CMC, the PIRTLES and the FISHERS, and pursuant to the terms and conditions of the Indemnity Agreements referenced above, SAFECO is entitled to reimbursement of said payments in the full amount of each, and in addition is entitled to interest, attorney's fees and costs incurred as a result of making said payments.

FIRST CAUSE OF ACTION

(Breach of Indemnity Agreements Against All Defendants)

39. SAFECO realleges and incorporates by reference paragraphs 1 through 38 as though set forth fully herein.

40. CMC, the PIRTLES and the FISHERS' failure to indemnify SAFECO as required under the Indemnity Agreements, to reimburse SAFECO for claims made against and paid by SAFECO, to deposit collateral with SAFECO as required under the Indemnity Agreements, and to grant SAFECO access to CMC, the PIRTLES and the FISHERS' books, records and accounts constitute a breach or breaches of the Indemnity Agreements.

41. As a direct and proximate result of CMC, the PIRTLES and the FISHERS' breach of the Indemnity Agreements, SAFECO is being irreparably harmed, and has been and will be incurring liability, losses, costs and damages, including attorney's fees, in the prosecution of this action.

WHEREFORE, SAFECO prays for judgment as hereinafter set forth.

SECOND CAUSE OF ACTION

(Specific Performance of Indemnity Agreements Against All Defendants)

42. SAFECO realleges and incorporates by reference paragraphs 1 through 41

1 as though fully set forth herein.

2 43. SAFECO is entitled to an order compelling CMC, the PIRTLES and the
3 FISHERS, and each of them, to specifically perform pursuant to the terms of the Indemnity
4 Agreements by, among other things, paying, indemnifying, saving and holding harmless
5 SAFECO from and against all losses, expenses and claims related to the Bonds which
6 SAFECO issued; obtaining SAFECO's discharge from the Bonds; depositing collateral with
7 SAFECO in an amount sufficient to discharge the claims made against SAFECO; and/or
8 providing SAFECO with free access to CMC, the PIRTLES and the FISHERS' books,
9 records and accounts.

10 WHEREFORE, SAFECO prays for judgment as hereinafter set forth.

11 **THIRD CAUSE OF ACTION**

12 **(Equitable Indemnity Against All Defendants)**

13 44. SAFECO realleges and incorporates by reference paragraphs 1 through 43
14 as though set forth fully herein.

15 45. By reason of the foregoing, SAFECO has incurred and will continue to incur
16 losses, costs, damages, attorney's fees and expenses by reason of or in consequence of
17 the Bonds it issued at CMC, the PIRTLES and the FISHERS' request and in satisfying
18 CMC's principal obligations.

19 46. Further, SAFECO has also incurred and will continue to incur losses, costs,
20 damages, attorney's fees and expenses by reason of or in consequence of CMC's breach
21 of the Sale and Servicing Agreements.

22 47. CMC, the PIRTLES and the FISHERS, and each of them, are obligated by
23 law and equity to indemnify SAFECO for the full extent of its losses, costs, damages,
24 attorney's fees and expenses.

25 WHEREFORE, SAFECO prays for judgment as hereinafter set forth.

26 **FOURTH CAUSE OF ACTION**

27 **(Money Paid Against All Defendants)**

28 48. SAFECO realleges and incorporates by reference paragraphs 1 through 47

1 as though set forth fully herein.

2 49. CMC, the PIRTLES and the FISHERS, and each of them, became indebted,
3 and will become indebted, to SAFECO for money paid, laid out and expended, and/or to be
4 paid, laid out and expended, on behalf of CMC, the PIRTLES and the FISHERS at their
5 special instance and request.

6 50. As a result of defendants' actions, SAFECO is entitled to reimbursement for
7 all sums expended and has been and will be damaged in an amount to be determined at
8 trial.

9 WHEREFORE, SAFECO prays for judgment as hereinafter set forth.

10 **FIFTH CAUSE OF ACTION**

11 **(Exoneration Against All Defendants)**

12 51. SAFECO realleges and incorporates by reference paragraphs 1 through 50
13 as though set forth fully herein.

14 52. By virtue of having made payments and incurring losses, costs, damages,
15 attorney's fees and expenses, and by virtue of having to make further payments and incur
16 further losses, costs, damages, attorney's fees and expenses, by reason of or in
17 consequence of the Bonds it issued at CMC, the PIRTLES and the FISHERS' special
18 instance and request, SAFECO is entitled to exoneration from CMC, the PIRTLES and the
19 FISHERS for such losses, costs, damages, attorney's fees and expenses.

20 WHEREFORE, SAFECO prays for judgment as hereinafter set forth.

21 **SIXTH CAUSE OF ACTION**

22 **(Quia Timet Against All Defendants)**

23 53. SAFECO realleges and incorporates by reference paragraphs 1 through 52
24 as though set forth fully herein.

25 54. SAFECO fears that it will continue to incur immediate and substantial losses,
26 costs, damages, attorney's fees and expenses by reason of, or in consequence of, the
27 Bonds it issued at CMC, the PIRTLES and the FISHERS' special instance and request.

28 55. CMC, the PIRTLES and the FISHERS are obligated, under the doctrine of

1 *Quia Timet*, to post collateral security with SAFECO for all losses, costs, damages,
2 attorney's fees and expenses incurred by reason of, or in consequence of, the Bonds it
3 issued at CMC, the PIRTLES and the FISHERS' special instance and request.

4 56. SAFECO is entitled to an injunction replacing CMC as the Sub-Servicer on
5 the bonded leases. SAFECO is also entitled to an order requiring CMC to provide an
6 accounting. Alternatively, SAFECO is entitled to a preliminary injunction appointing a
7 receiver as to CMC.

8 WHEREFORE, SAFECO prays for judgment as hereinafter set forth.

9 **SEVENTH CAUSE OF ACTION**

10 **(Breach of Sale and Servicing Agreement Against CMC)**

11 57. SAFECO realleges and incorporates by reference paragraphs 1 through 56
12 as though fully set forth herein.

13 58. CMC's failure to remit payment, under the applicable Sale and Servicing
14 Agreements, to NetB@nk and Epic Funding of the payments from the various lessees
15 pursuant to the pooled leases, constitutes a breach or breaches of those Sale and
16 Servicing Agreements.

17 59. As a direct and proximate result of CMC's breach of the Sale and Servicing
18 Agreements, SAFECO is being irreparably harmed, has been and will be incurring liability,
19 losses, costs and damages, including attorney's fees, in an amount to be proven at trial.

20 60. SAFECO has satisfied all conditions precedent under the terms of the Sale
21 and Servicing Agreements prior to initiating the present proceedings against CMC.

22 WHEREFORE, SAFECO prays for judgment as hereinafter set forth.

23 **EIGHTH CAUSE OF ACTION**

24 **(Specific Performance of Sale and Servicing Agreements Against CMC)**

25 61. SAFECO realleges and incorporates by reference paragraphs 1 through 60
26 as though fully set forth herein.

27 62. SAFECO is entitled to an order compelling CMC to specifically perform
28 pursuant to the terms of the Sale and Servicing Agreements by, among other things,

1 remitting lease payments, under the applicable agreements, to NetB@nk and Epic Funding
2 for payments made by SAFECO to those claimants and to Guardian Capital LLC as such
3 claim is presented.

4 WHEREFORE, SAFECO prays for judgment as hereinafter set forth.

5 **NINTH CAUSE OF ACTION**

6 **(Accounting Against CMC)**

7 63. SAFECO realleges and incorporates by reference paragraphs 1 through 62
8 as though fully set forth herein.

9 64. SAFECO has repeatedly demanded that CMC, as Sub-Servicer under the
10 Sale and Servicing Agreements, account for lease payments received from the various
11 leases pursuant to the pooled leases. CMC, while providing certain accounting information
12 to SAFECO, refused, and continues to fail and refuse, to render a complete, thorough and
13 detailed accounting to SAFECO, particularly as reflecting the current bank accounts of
14 defendants, and each of them, the account balances, the path of monies flowing into and
15 out of said lease accounts and to investors, the apparent commingling of incoming monies
16 into common, undifferentiated accounts and failure to explain why payments promised to
17 investors were not paid, despite specific representations to SAFECO that such payments
18 would be made, in whole or in part.

19 65. As a result of the foregoing, SAFECO is entitled to an accounting from CMC,
20 as Sub-Servicer under the Sale and Servicing Agreements, regarding its disposition of all
21 lease payments received from the various lessees pursuant to the pooled leases.

22 WHEREFORE, SAFECO prays for judgment as follows:

- 23 1. For damages according to proof at trial;
24 2. For prejudgment interest thereon at the legal rate;
25 3. For reasonable attorney's fees and expenses incurred herein;
26 4. For costs of suit herein;
27 5. For an order requiring defendants, and each of them, to perform specifically
28 the terms and conditions of the Indemnity Agreements;

1 6. For an order requiring defendants, and each of them, to perform specifically
2 the terms and conditions of the Sale and Servicing Agreements;

3 7. For an accounting as to bonded lease payments; and

4 8. For such other and further relief as this Court may deem necessary and
5 proper.

6 Dated: February 20, 2002

BOOTH, MITCHEL & STRANGE LLP

7
8 By. 

9 MICHAEL T. LOWE
10 JAMES G. STANLEY
11 Attorneys for Plaintiff
12 SAFECO INSURANCE COMPANY
13 OF AMERICA
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19
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EXHIBIT TABLE OF CONTENTS

ITEM

EXHIBIT

PAGE

Indemnity Agreement dated April 30, 1999	A15
Indemnity Agreement dated June 26, 1999	B24
Sale and Servicing Agreement	C33
Assignment	D76
NetB@nk Letter dated December 28, 2001	E79
Epic Funding Letter dated December 26, 2001	F83
Epic Funding Letter dated January 8, 2001	G85